materials upon which to exercise it. The only answer lies in some sort of judicial legislation and for myself, bearing in mind the insuperable difficulties which are peculiar to this class of case, I would say that in this country at the present time this Court should express the view that the conventional figure in the case of a young adult should be $3,000 and that view should be accepted by Judges.

I would, accordingly, allow the appeal and reduce the damages awarded under section 8 from $5,000 to $3,000.

The appellant should have the costs of the appeal. In view of what was said at the hearing it is for him to say whether or not he will enforce that order.

Hill J.A.: I have read the judgment of the learned Chief Justice and I agree that the appeal should be allowed and the damages under section 8 reduced from $5,000 to $3,000.

In awarding damages for loss of expectation of life it is impossible for the courts to apply principles of common sense and jurisprudence and I wholly agree with the learned President that some sort of conventional measure of damages should be accepted by the courts and that in the case of a young adult that conventional figure in this country at the present time should be $3,000.

I agree with the order regarding costs. The deposit should be paid out to the appellant.

Good J.A.: I also have had the benefit of reading the judgment which has just been delivered by my Lord the Chief Justice with which I am in complete agreement.

There is no fiction more fictional, no paradox more paradoxical, than that which is embodied in the doctrine which provides for the payment of damages for loss of expectation of life. On the one hand it is universally recognized that the balance of enjoyment which a person might have hoped to derive from the ups and downs of life is incapable of being expressed in terms of money. On the other hand it has been laid down as a matter of law, partly by statute and partly by judicial authority that the estate of a person deprived of his life by another's negligent act is entitled to compensation for the loss of something which, it is agreed, is incapable of measurement, and such compensation can only be paid in the form of money. What then, is a judge, faced with these two contradictory propositions, to do?

The curve of the graph representing damages in these cases, after some fairly striking undulations, has settled down in the low hundreds. The only course for a judge to take is to follow the results of the opinions of the House of Lords and the Court of Appeal in England which have had the effect of stabilizing the damages in cases of this kind within what their Lordships themselves concede are conventional limits.

For these reasons I, too, would allow the appeal to the extent of reducing the damages awarded under section 8 from $5,000 to $3,000. I would dismiss the cross-appeal and I agree with what the learned Chief Justice has said as to costs.

Appeal allowed.
Cross-appeal dismissed.

Solicitors: *Battenberg & Talma; Gibb & Co.*

TAN CHENG QUEE & ANOR. v. SAY HOR KEE

[O.C.J. (Hashim J.) April 18, 1962]

[Kuantan — Motion No. 3 of 1962]

Mining Enactment (Cap. 147), ss.97(ii) and 99(i) — Application by stranger to be added as party under O.16 r.12 — Whether Warden has power to add stranger as party under s.99(i) — Whether Court has power to do so.

Practice and Procedure — Adding of party — Application by stranger — R.S.C., O.16 r.12.

The complainant was the registered lessee of a mining lease in Kuala Kuantan which he bought from the Siamese Tin Syndicate (Malaya) Ltd. on August 14, 1961. The respondent was the registered sub-lessee of the mining lease, which sub-lease was registered in his personal name on January 18, 1960. On August 19, 1961 the complainant filed a complaint under section 97(ii) of the Mining Enactment before the Inspector of Mines, Pahang, calling upon the sub-lessee to show cause why the sub-lease should not be cancelled for failing to work the land for a period of 6 months. On September 20, 1961 the Senior Inspector of Mines ordered that the application be transferred to the High Court under section 101 of the Mining Enactment. On March 10, 1962 the Lee Shang Mining Co. filed a Motion under O.16 r.12 that the company be added as a respondent in respect of the application under section 99(i) of the Mining Enactment.

Held: (1) under section 99(i) of the Mining Enactment the Warden shall issue a summons to the parties registered as lessee or sub-lessee and nobody else. The Warden shall also notify and call all persons whose interests may, in his opinion, be affected by such enquiry. But there is nothing in the section which empowers the Warden to add any other person as a party to the enquiry;

(2) the Court has no jurisdiction to add any person or company who has no legal title to the lease or sub-lease as an additional respondent.

Cases referred to:—

(1) *Moser* v. *Marsden* [1892] 1 Ch. 487.
(2) *Gardner* v. *Siau Kuan Chia* (1912) Innes 159, C.A.; (1907-35) F.M.S. Willan's Digest of Reported Cases, 137.
(3) *Atid Navigation Co. Ltd.* v. *Fairplay Towage & Shipping Co. Ltd.* [1955] 1 W.L.R. 336.

MOTION.

T. C. Tang for the applicant.
M. Edgar for the claimant.
Respondent not represented.

Cur. Adv. Vult.

Hashim J.: This is a Motion under O.16 r.12. In my opinion it is rather an unusual Motion. Normally a party to a suit makes an

application under O.16 r.12 but in this particular case a "stranger" to the suit applies that they be added as respondent.

The following facts are not disputed:—

(a) The complainant is the registered lessee of mining lease No. 353 for Lot 3505 in the Mukim of Kuala Kuantan which he bought from the Siamese Tin Syndicate (Malaya) Ltd. on 14th August, 1961.

(b) The respondent is the registered sub-lessee of the mining lease. The sub-lease was registered in his personal name on 18th January, 1960.

(c) On 19th August, 1961 the complainant filed a complaint under section 97(ii) of the Mining Enactment, (Cap. 147) before the Inspector of Mines, Pahang, calling upon the sub-lessee to show cause why the sub-lease should not be cancelled for failing to work the land for a period of six months.

(d) On 20th September, 1961, the Senior Inspector of Mines, Pahang, ordered that the application be transferred to the High Court under section 101 of the Mining Enactment.

(e) On 10th March, 1962, Lee Shang Mining Company of Gambang, Kuantan, filed this Motion No. 3 of 1962 that the company be added as a respondent in respect of the application made under section 97(ii) of the Mining Enactment.

The Motion came before the Court on 23rd March, 1962. If I understood him correctly, Mr. Tang, counsel for the company, who moved the Motion contended that the company should be added as a respondent on the authority of section 99(i) of the Mining Enactment. Section 99(i) states, *inter alia*, that the Warden hearing the complaint shall notify "and call all persons whose interests may, in his opinion, be affected by such enquiry." He contended as the respondent, Say Hor Kee, was a partner of the company, the company was an interested party and should be cited as an additional respondent.

Mr. Edgar, for the complainant, opposed the Motion. He cited several authorities to support his contention that the company could not in any way be added as a respondent. He contended that under section 36(i) of the Mining Enactment, by law, the company was not entitled to be an additional respondent. The sub-lease was registered in the name of the respondent, Say Hor Kee. Mr. Edgar referred to section 26 of the Mining Enactment. I think the relevant part of this section would be "and shall not be capable of being transferred, transmitted, sub-leased, charged or otherwise dealt with except in accordance with the provisions of this Enactment." He also referred to section 6 of the Mining Enactment which stipulates to whom State land may be leased. He contended that nothing in section 6 showed that State land could be leased to a partnership. In support of this contention he referred to *Moser* v. *Marsden* [1]. In that case it was held that M. not being directly interested in the issues between the plaintiff and the defendant, but only indirectly and commercially affected, the Court had no jurisdiction to add him as a defendant. Mr. Edgar also referred to sections 160, 161 and 165 of the Land Code. His contention was that as the respondent, Say Hor Kee, was not registered as a "trustee" of the company, the company could not be added as an additional respondent. He based his contention on the authority of *Gardner* v. *Siau Kuan Chia* [2]. I would quote this report in full as it would appear to be relevant to this Motion.

"417. * *Mining Enactment, 1904, section 28 — Agreement void for non-registration and non-compliance with section 28.*

When an applicant for mining land executes an agreement granting another all the lode rights on the land and undertaking to have the agreement endorsed on the title when issued, the agreement is null and void as an attempt to deal with land otherwise than in accordance with the Mining Enactment, 1904, section 28(i), and equity or the Specific Relief Enactment, 1903, will not assist the grantee because the result would be a trust not appearing upon the register arising out of an agreement not in accordance with the provisions of the Enactment. The English rules of equity would, in appropriate circumstances, be recognised and acted on here if such recognition were not in any particular case a contravention of a written law. But the English equity decisions have no validity here for the purpose of breaking in upon the intention of the legislature regarding the indefeasibility of a title except by fraud or other specified circumstances."

The case of *Atid Navigation Co. Ltd.* v. *Fairplay Towage & Shipping Co. Ltd.* [3] was referred to this Court. The head-note reads:

"The discretionary jurisdiction of the court under R.S.C., O.16, r.11, on application by the defendants to join additional defendants against the wishes of the plaintiffs does not extend to the case where the sole purpose of the defendants' application is to add additional plaintiffs in their counterclaim, and the presence of the additional parties is not necessary for the determination of the issues as pleaded between the plaintiffs and the defendants."

The *Annual Practice*, 1957 was also referred to this Court at page 2003. I quote: "The Court has no jurisdiction inherent or otherwise over any person other than those properly brought before it, as parties or as persons treated as if they were parties under statutory provisions." It was the contention of Mr. Edgar that the persons in the application were the complainant and Say Hor Kee and nobody else.

In my opinion the provisions of section 99(i) of the Mining Enactment are binding on a Warden and not on this Court. Section 99 lays down the procedure when the complaint is heard by a Warden. As this Motion rests solely on section 99(i) of the Mining Enactment I would quote the section:

"99. (i) The person complaining shall lodge a memorandum in writing at the office of the Warden, specifying shortly the subject matter of the complaint and the remedy sought to be obtained, or he may make his complaint in person, at any time or place, to the Warden, who shall forthwith reduce it to writing; and upon receipt of such memorandum or oral complaint the Warden shall, if he thinks the complaint is based on good grounds, issue a summons to the party against whose conduct such complaint is made, stating the nature of the complaint and the time and place at which the same will be enquired into, and he shall also notify and call all persons whose interests may, in his opinion, be affected by such enquiry."

* With due deference may we point out that it is not the full report but a head note as appears in *Willan's* Digest. — *Ed. M.L.J.*

It will be seen that the Warden shall issue a summons to the party against whose conduct such complaint is made. This, in my opinion, can mean only one of the parties registered as lessee or sub-lessee and nobody else. The Warden shall also notify and call all persons whose interests may, in his opinion, be affected by such enquiry. But there is nothing in the section which empowers the Warden to add any other person as a party to the enquiry. In my opinion, the section gives power to the Warden to exercise his discretion and call any other person whom he thinks may be affected by the enquiry and record the evidence of such other person. Such other person is not made a party to this enquiry. This Motion is brought under O.16 r.12 and, in my opinion, the Rules of the Supreme Court, 1957 regulate the procedure in respect of this Motion and not the provisions of section 99 of the Mining Enactment.

Mr. Tang, for the company, referred to an order dated 2nd November, 1961 in Raub High Court Civil Suit No. 7 of 1961. It was a consent order and the parties to the suit would appear to be the partners of the company. The complainant was not a party to the Civil Suit No. 7 of 1961. I fail to see how an order in C.S. 7 of 1961 could be binding on the complainant. The consent order declared that Say Hor Kee held the sub-lease as trustee for the company but this part of the consent order was never registered under the Mining Enactment. The second part of the consent order was that Say Hor Kee was restrained "from dealing with the said land and from interfering with the mining of the said land by the said Lee Shang Mining Company". I fail to see how any person or body of persons other than the registered sub-lessee, Say Hor Kee, can mine the land in contravention of the Mining Enactment. The Lee Shang Mining Company has not been registered as a company or as a corporation. It has only been registered under the Registration of Businesses Ordinance — section 6 of the Mining Enactment refers.

The subject matter of this Motion is a sub-lease registered in accordance with the provisions of the Mining Enactment. The complainant is the registered lessee and the respondent, Say Hor Kee, is the registered sub-lessee in his personal capacity and not in trust for any body of persons. I hold the Court has no jurisdiction to add any person or company who has no legal title to the lease or sub-lease as an additional respondent. It is open to the company to take any legal action against Say Hor Kee it may deem fit and proper.

The Motion is dismissed with costs.

Motion dismissed.

Solicitors: *T. C. Tang & Co.*; *Bannon & Bailey.*

PUBLIC PROSECUTOR v. BEHN MEYER & CO. LTD.

[A. Cr. J. (Rose C.J.) May 2, 1962]

[Singapore — Magistrate's Appeal No. 1 of 1962]

Sale of Food and Drugs Ordinance (Cap. 148), ss.9 and 11(1)(g) — Selling of cod liver oil capsules — No reference embodying test within meaning of s.9(2) — Whether prosecution failed to comply with s.9.

Food and Drugs Regulation, 1957, reg.3(1)(i).

The respondents were charged with selling cod liver oil capsules under section 11(1)(g) of the Food and Drugs Ordinance. The learned Magistrate acquitted the respondent on the ground that section 9 of the said Ordinance had not been complied with. On appeal by the Public Prosecutor,

Held: as no evidence was adduced at the trial to show that there was no prescribed test or, indeed, that another test other than that prescribed by the British Pharmacopoeia or British Pharmaceutical Codex was used one cannot quarrel with the decision of the learned Magistrate that the prosecution had failed to comply with section 9.

MAGISTRATE'S APPEAL.

Sachi Saurajen (Deputy Public Prosecutor) for the appellant.

David Chelliah for the respondents.

Cur. Adv. Vult.

Rose C.J.: The respondents were charged with selling cod liver oil capsules which were below standard, contra section 11(1)(g) of the Sale of Food and Drugs Ordinance.

The learned Magistrate acquitted the respondents on the ground that section 9 of the Ordinance had not been complied with.

Section 9 reads as follows:—

"9. (1) The certificate of the analyst shall be in the prescribed form.

(2) Where any method of analysis has been prescribed, any analyst either for the prosecution or defence shall, in his certificate of analysis, declare that he has followed the prescribed method in his analysis."

Sub-paragraph (i) of paragraph (1) of regulation 3 of the Food and Drugs Regulations, 1957 reads as follows:—

"(i) Drugs.

Drugs, the names or descriptions of which are included in the current edition with amendments or supplements (if any), of the 'British Pharmacopoeia' or 'British Pharmaceutical Codex' shall conform to the descriptions and tests respectively prescribed therein."

No evidence was adduced at the trial to show that there was no prescribed test or, indeed, that another test other than that prescribed by the British Pharmacopoeia or British Pharmaceutical Codex was used.

References to cod liver oil are contained in pages 179, 946, 956 and 958 of the British Pharmacopoeia (1958) edition.

Mr. Saurajen contends that those references embody no prescribed test within the meaning of section 9(2) of the Ordinance, for the reason, it would seem, that there is no reference to capsules as such. And it is suggested that the prescribed test for cod liver oil contained in a capsule would